



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 13117701

Date: JUNE 24, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a public health specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially asserted that he intended "to provide my expertise to Federal, States and Territorial partners to protect fellow Americans from falling sick from vaccine-preventable diseases; support States, Territories and other partners to carry out projects to improve vaccination access and uptake." He further indicated: "I am very confident that I would be able to support Government of the United States of America to reach the disease reduction targets and able to manage serious human communicable and infectious diseases that vaccines prevent their symptoms, risks, possible complications and illnesses effectively." In addition, the Petitioner stated: "I am very much interested to work with public health agencies of the United States of America in achieving vaccination coverage goals and vaccine preventable disease reduction targets. I find profound interest and committed to work in preventing infectious and communicable diseases." Furthermore, the Petitioner noted that he was "willing to work with public health agencies" in "activities focusing [on] preventing diseases."

The Director issued a request for evidence (RFE) asking the Petitioner to provide clarification as to his proposed endeavor in the United States. He was informed that he should submit a "detailed description of the proposed endeavor and why it is of national importance."

In response to the Director's RFE, the Petitioner indicated that he "started applying for positions in the USA as non-citizen in some organizations" and that he planned to "continue to look for job announcement/posting" in order to obtain "a suitable position immediately after my immigration to USA."⁴ The Petitioner explained that his career plans included pursuing work for the "Centers for Disease Control and Prevention" (CDC), "non-governmental organizations (NGOs) and foundations who operate in and from the USA," the "United States Agency for International Development (USAID)," United Nations (UN) organizations and their affiliates based in the USA, and "universities of the USA."

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

The record includes information about U.S. immigration, China's position as a global leader in scientific research, technological advances in Asia as a challenge to U.S. science and technology leadership, the link between education and skill development, the public health surveillance workforce of the future, and the cost of unvaccinated adults to the U.S. economy. In addition, the Petitioner provided articles discussing public health and the U.S. economy, the U.S. President's Emergency Plan for AIDS Relief, public health in a global context, vaccine safety communication, modernization of the U.S. immigration system, the CDC's Vaccines for Children Program, worker illness and injury costs, the Ebola outbreak in West Africa, and a vaccine-derived poliovirus outbreak in the Lao People's Democratic Republic. He also submitted information about the World Health Organization (WHO), U.S. engagement in global health efforts, immunization safety surveillance, USAID and its health initiatives in Cambodia, U.S. relations with Cambodia, the public health workforce shortage, CDC immunization efforts, WHO measles vaccination campaigns, and immunization and infectious diseases.⁵

The Petitioner also provided a February 2020 letter from [REDACTED] a professor of political science at [REDACTED] University, asserting that the Petitioner satisfies *Dhanasar*'s first prong "because his proposed employment field – public health with special emphases on preventing and containing communicable diseases; immunization; and maternal and child health – has substantial intrinsic merit and is national in scope."⁶ "Substantial *intrinsic* merit" (emphasis added) and "national in scope" are terms set forth in the first prong of the vacated *NYSDOT* framework rather than the first prong of the *Dhanasar* precedent decision. Regardless, the issue here is not the substantial merit and national importance of the field of public health or its sub-fields such as disease prevention, immunization, or maternal and pediatric health, but rather the substantial merit and national importance of the specific endeavor the Petitioner proposes to undertake.

In the decision denying the petition, the Director acknowledged the Petitioner's intention to work in the field of public health in the United States, but concluded that he "did not provide a detailed description of his proposed undertaking or venture" and that "the exact nature of [his] proposed endeavor is not apparent."⁷ The Director further stated that the Petitioner had not sufficiently demonstrated his proposed endeavor stands to have broader implications in the field, significant potential to employ U.S. workers, substantial positive economic effects, or a broader impact on societal welfare.

With the appeal, the Petitioner submits online job portal information indicating that he has applied to positions at the United Nations Foundation (policy adviser), United Nations Children's Fund (health adviser), Lowell Community Health Center (immunization coordinator), John Snow Inc. (evaluation and data specialist), and the Bill & Melinda Gates Foundation. The Petitioner, however, has not sufficiently identified his proposed work for these organizations or shown that the specific public health projects he plans to undertake support a finding of national importance.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that

⁵ While this documentation helps show the substantial merit of different types of work in the public health field, the Petitioner has not identified the specific public health projects he plans to undertake in the United States.

⁶ [REDACTED], a political science scholar, does not claim to be an expert in U.S. public health matters.

⁷ In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In his appeal brief, the Petitioner asserts that he “is an expert in infectious diseases having spent over 20 years with the WHO” and that he has the requisite “education, skills, knowledge and a prior record of success” in his field. The Petitioner’s skills, knowledge, and professional accomplishments relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

Furthermore, the Petitioner points to “the medical and economic consequences of the coronavirus pandemic now ravaging the United States – a situation so dire that we stand on the precipice of economic collapse, the death of more than 100,000 Americans and tens of thousands of survivors of the virus who will live with the collateral medical ailments resulting from this virus.” He further states: “The situation is one that is so dire that on May 4, 2020 of bipartisan bill was introduced in the Senate seeking to recapture 40,000 visas for doctors and nurses. A similar bill was introduced in the House on May 8, 2020.” The appellate submission includes a May 2020 article, entitled “Bill Would Recapture 40,000 Green Cards for Doctors and Nurses.” This article indicates that “[t]he growing shortage of doctors and nurses over the past decade has been exacerbated by the COVID-19 crisis.”⁸ The Petitioner, however, does not explain the public health capacity in which he will work to address the U.S. coronavirus pandemic, nor has he demonstrated the national importance of the specific projects he plans to undertake.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide public health services for his future U.S. employer, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his prospective employers and their activities to impact the field of public health more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic

⁸ The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Additionally, in Section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), Congress specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians in underserved areas. This exception is limited to physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12.

effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's public health projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.